



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

February 12, 2008

The Honorable Martha Fuller Clark, Chairman  
Senate Energy, Environment and Economic Development  
LOB Room 102  
Concord, NH 03301

**Re: SB 328 relative to civil forfeitures for certain waste disposal violations**

Dear Senator Fuller Clark and Members of the Committee:

Thank you for the opportunity to testify on SB 328, relative to civil forfeitures for certain waste disposal violations, which was requested by the Department of Justice ("DOJ"). The Department of Environmental Services ("DES") supports this bill.

Individual sewage disposal systems ("septic systems") are regulated under RSA 485-A:29-44 and the rules adopted pursuant thereto, Env-Wq 1000. Most people who rely on septic systems understand the importance of maintaining them in a safe and sanitary condition. Failed systems jeopardize public health and the safety and well-being of others living in proximity, in addition to harming, or threatening harm to, the environment. When DES becomes aware of a failed system, the primary goal of any action taken is to ensure that the septic system is repaired or replaced or, if possible, that the structure served by the system is connected to a municipal sewer. However, over the years DES has worked with the DOJ on several cases involving property owners who fail or refuse to repair or replace a failed septic system. In cases where a property owner has resources available to address the situation but chooses not to, the assessment of monetary penalties can be an effective tool that leads to repair or replacement.

Under the present statute, the maximum civil forfeiture that can be levied by a court is \$5,000, regardless of how much harm the violation caused or threatened and regardless of how long the violation has continued. The \$5,000 penalty was established in 1974, when the cost to repair or replace a septic system was considerably less than it is now, and has not been increased since. Facing a maximum penalty of \$5,000 may well be preferable to spending more than that to correct a violation of RSA 485-A:29-44. The proposed bill would provide a greater incentive for correcting violations sooner, both by increasing the maximum penalty from \$5,000 per violation to \$10,000 per day per violation, and by making each day of an on-going violation a separate violation. This change also would make the civil penalty provisions for this program more consistent with civil penalties/forfeitures for other programs implemented by DES.

Thank you again for the opportunity to express our support. If you have any questions, please contact me at 271-2958 or Assistant Commissioner Michael Walls at 271-8806.

Sincerely,

Thomas S. Burack  
Commissioner

cc: Senators Cilley, Reynolds, and Clegg  
Representatives Wall, DiFruscia, and Bettencourt